

**OFFICE OF ADMINISTRATIVE LAW**

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*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

Date: September 9, 2011

To: Arvie Carroll

From: Chapter Two Compliance Unit

Subject: **2011 OAL DETERMINATION NO. 20 (S)**  
**(CTU2011-0829-02)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation Pleasant Valley State  
Prison Department Operations Manual Supplement section 53130.9

On August 29, 2011, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether Pleasant Valley State Prison Department Operations Manual (DOM) Supplement section 53130.9, titled "Assignments," constitutes an underground regulation. DOM Supplement section 53130.9 is one subsection of DOM Supplement section 53130, titled "Inmate Work Training Incentive Program." DOM Supplement section 53130 was issued by the warden at Pleasant Valley State Prison and is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,<sup>1</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>2</sup> Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

<sup>1</sup> "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>2</sup> Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility....

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4<sup>th</sup> 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

...  
The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition was issued by Pleasant Valley State Prison and applies solely to the inmates of Pleasant Valley State Prison. Therefore, the rule is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.<sup>3</sup>

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<sup>3</sup> The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

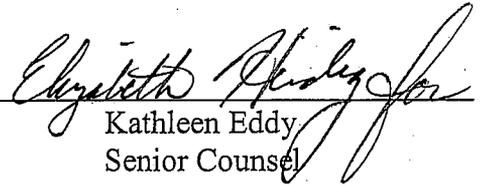
(D) The challenged rule has expired by its own terms.

**(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. [Emphasis added.]**

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.



Debra M. Cornez  
Assistant Chief Counsel/  
Acting Director



Kathleen Eddy  
Senior Counsel

Copy: Matthew Cate  
Tim Lockwood

# Exhibit A

 <p>California Department of Corrections and Rehabilitation</p> <p><b>OPERATIONS MANUAL</b></p>	<p>Chapter: 5 <b>CUSTODY/SECURITY OPERATIONS</b></p>
	<p>Article: 39 <b>INMATE WORK/TRAINING INCENTIVE PROGRAM</b></p>
	<p>Sections: 53130 <b>INMATE WORK TRAINING INCENTIVE PROGRAM</b></p>

**RESPONSIBILITY FOR REVIEW:**

Associate Warden, Central Operations.

**ANNUAL REVIEW DATE:**

March

**53130.2**

**INMATE WORK/TRAINING  
PROGRAM COORDINATOR**

The Chief Deputy Warden shall exercise administrative responsibility for the Inmate Work/Training Incentive Program (IWTIP).

The Associate Warden (AW) and Correctional Captain, Central Operations, are responsible for auditing and ensuring staff are in compliance with the Inmate Assignment Office (IAO) procedures.

The Inmate Assignment Lieutenant is responsible for:

1. Assigning inmates to work/training assignments as established by the Unit Classification Committee (UCC) and/or the Institutional Classification Committee (ICC).
2. Establishing and maintaining Pleasant Valley State Prison (PVSP) waiting lists for inmate work assignments, vocational trades, and academics.

**53130.6.2.4**

**CHANGING PRIVILEGE  
GROUPS**

IWTIP privileges may be temporarily suspended or reduced by either classification committee action or as part of a disciplinary disposition.

Copies of the UCC/ICC Classification Result Sheets shall be distributed to Records (original), a copy placed in the IAO drop box located in Records, a copy to the respective Captain, Correctional Counselor II (CC II), and assigned Correctional Counselor I (CC I).

Reduction/Suspension of Privileges

If suspension of privileges is a result of a classification action, the Classification Chrono (CDC 128-G) shall include the same information as a General Chrono (CDC 128-B) prepared by the Senior Hearing Officer (SHO).



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53130:8.2  
PRIORITY DUCAT SYSTEM

All approved original requests for inmate priority/non-priority ducats are to be delivered to the Inmate Assignment Lieutenant or Sergeant by 1100 hours, the day preceding the requested appearance of an inmate, as referenced in Department Operations Manual (DOM) Supplement, SubSection 52020.9.4, Master Pass List (see Attachment A).

The ducat shall have the word "priority" clearly stamped or printed on the ducat.

All priority/non-priority ducats shall be delivered to the housing units for distribution by Third Watch Floor Officers the night before the pass is to be honored, the inmate shall sign for the ducat. The completed signed sheet shall be forwarded to the Facility Lieutenants Office.

Upon termination of the contact with the inmate, his arrival time and departure time shall be recorded on the ducat and returned by the inmate to the work supervisor for the purposes of timekeeping and inmate accountability.

The work supervisor shall attach the completed "priority ducat" to his daily attendance record. The "priority ducat system" shall be used conservatively to facilitate necessary casework purposes and health care purposes. All such contacts shall be handled expeditiously.

53130.9  
ASSIGNMENTS

Disciplinary Unassignment of Inmates

If an inmate becomes a disciplinary problem on the work site and efforts to reconcile his behavior, either through documentation or counseling, have proven unsuccessful, the inmate shall be referred to the appropriate UCC for program review. Review of his assignment may be accomplished through use of a CDC 128-B supported by backup documentation which includes a Rules Violation Report (CDC 115), CDC 128-B, Custodial Counseling Chrono (CDC 128-A), or Work Supervisors Report (CDC 101).

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Should an inmate become disruptive, display a non-compliant behavioral pattern, refuse to perform his duties, or become a threat to the Prison security at the work site, the work/training supervisor shall submit a CDC 115 documenting the inmate's behavior. The work/training supervisor may request that the inmate be unassigned from his work/training assignment.

The inmate work/training supervisor shall carry the inmate on A-time until the disciplinary hearing process is completed. The Facility Lieutenant shall order the inmate's workchange pass suspended pending completion of the disciplinary hearing if the inmate is assigned outside the facility. The inmate shall be instructed not to return to his work/training assignment until the disciplinary hearing has been completed and that he shall receive A-time pending completion of the disciplinary process and classification process.

In the event the inmate is found guilty, the SHO shall ensure delivery of the CDC 115 to the CC II on the facility where the inmate is housed. The CC II shall schedule the inmate for UCC review.

Should the inmate be found not guilty, he shall be instructed to report to his assignment. Any A-time received shall be converted to S-time by the work/training supervisor.

Inmate Placed in Administrative Segregation

When an inmate's name appears on the Daily Movement Sheet (DMS) as being placed in Administrative Segregation (Ad-Seg), the work/training supervisor shall close out the Inmate Work Supervisor's Time Log (CDC 1697) form. The ICC shall determine the inmate's appropriate work credit earning status upon his release from Ad-Seg.

If an inmate violates a section of the California Code of Regulations (CCR), Title 15, that causes him to be placed on modified program status pending housing



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availability in the Ad-Seg Unit, the Facility Lieutenant shall compile a list of the involved inmates and distribute a copy to the IAO.

The IAO shall avoid placing any of the inmate(s) listed as pending Ad-Seg placement into a work/education or vocational assignment. The IAO shall temporarily unassign any inmate already in a work/education or vocational assignment pending Ad-Seg placement. Once placed in Ad-Seg, the inmate's work status will be changed from the unassigned code UN to Ad-Seg code ADS.

If an inmate is not placed into Ad-Seg and removed from modified program, the Facility Lieutenant shall notify the IAO for appropriate program placement.

Rotation of Assignments

Inmates assigned to any position at the Prison which requires an extensive amount of staff/inmate interaction, such as program office clerks, education/vocational clerks/aides, clothing room workers, canteen workers, chapel clerks, housing unit clerks, etc., shall be unassigned from their position as well as the assignment location every two years. All efforts shall be made to rotate the inmates to other available assignments on their respective facilities. This routine rotation shall not affect the inmate's work/training group designation, although it may divest the inmate of a good position.

All other inmate job assignments such as any porter positions, yard crew positions, etc., shall not exceed a three year period.

Inmate Job Description/Safety Specifications

In compliance with Senate Bill 198, each Inmate job description shall include a Code of Safe Practices. The job descriptions are not limited to, but shall include, the inmate's start time, lunch break, end of shift time, practices regarding safe workplace conditions, work practices, and personal protective

53130.10-1  
**PERFORMANCE STANDARDS**

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equipment when necessary.

Program Evaluation Reports

A CDC 101 shall be prepared and submitted after the first 30 days of an inmate's initial assignment. The second CDC 101 is to be completed 60 days after the initial 30-day report. Subsequent performance evaluations shall be submitted every 90 days until the inmate completes all five pay steps, or 450 days of assignment. Upon completion of the five steps, performance evaluations shall continue to be submitted every 90 days, or anytime an inmate is terminated or changes work assignments.

All inmate job descriptions shall utilize the approved PVSP format. Both the inmate and work supervisor shall sign the job description. One copy shall be given to the inmate, and the original shall be forwarded to the IAO within ten days. A copy of the job description will be kept by the work supervisor (see Attachment B).

For accountability, the IAO shall maintain a file of current job descriptions. If a job description is not received in the IAO within 14 working days, a delinquent notice shall be sent to the Department Head for follow up action. If the job description is not received within 20 days after that, a second delinquent notice shall be forwarded to the Division Head for corrective action.

On the Job Injury

When an inmate receives an on-the-job injury, the work supervisor shall document the injury on a CDC 128-B. A copy of the CDC 128-B shall be routed to the Medical Department for evaluation of the inmate's injury. The Medical Department shall document their findings on a Medical Chrono (CDC 128-C). In cases that result in a short-term absence (seven days or less) from a job assignment, the CDC 128-C shall be forwarded to the work supervisor and S-time shall be documented on the



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CDC 1697: If the injury results in an absence of more than seven days from the job assignment, the CDC 128-C shall be forwarded to the Facility CC II/Facility Captain for use by the UCC in granting appropriate credits.

When an inmate sustains a minor injury, a Band-Aid Form (CDC 3066) needs to be offered to the inmate for documentation. If he chooses not to seek further medical treatment. In case of a serious injury, a Worker's Compensation Claim Form (CDC 3301) needs to be given to the inmate for completion and sent to the Return-To-Work Office immediately. Other documentation included in the Inmate Work Injury packages also needs to be completed and sent to the Return-To-Work Coordinator for process to State Fund.

Medical/Psychiatric And Inpatient/Hospitalization

When an assigned inmate is placed in a community hospital or the PVSP Correctional Treatment Center (CTC), timekeeping responsibilities shall remain with the work supervisor until unassigned per the DMS. S-time shall be utilized while the inmate is in a community hospital or in the PVSP CTC.

It is imperative the DMS be reviewed on a daily basis, and upon un-assignment for any reason the CDC 1697 is to be updated.

Please refer to error codes for appropriate corrections.

When reviewing the DMS, the effective date is the date used upon assignment. The activity date (date of DMS) is the date used for un-assignment.

When Exceptional time (S, A, or E) is used it must be noted at the bottom of the CDC 1697. Staff shall not deliver the CDC 1697 or Inmate Pay Sheet to the Records Department. The Inmate Pay Sheet shall be delivered to the Accounting Office (see Attachment C) no later than the third business day of the following

53130.110  
 WORK SUPERVISORS TIME LOG  
 CDC 1697

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month.

All work/training supervisors shall complete the CDC 1697s. The following steps shall be taken when the inmate goes on pre-parole or pre-transfer status.

1. If an inmate is paroling, his CDC 1697 shall be closed out, including ten working days of "S" time, and taken to the Records Department within 24 hours after appearing on the DMS.
2. If an inmate is transferring, his CDC 1697 shall be closed-out, including three working days of "S" time, and taken to the Records Department immediately upon appearing on the DMS.

The work/training supervisors shall record on all inmate time logs the following information: inmate's full last name; first name; and middle initial (if any).

Work Supervisor's Time Log

When an inmate is reassigned to another position number, the work supervisor shall close out the old CDC 1697 and initiate a new one, reflecting the new position number.

Timekeeping corrections shall be made in the following manner:

The CDC 1697 shall be completed in black ink only. When an error is made on the CDC 1697, the error shall be crossed out with a single line and the correct entry shall be made and initialed by the work supervisor. INMATE WORK SUPERVISORS SHALL NOT USE WHITE OUT OR CORRECTION TAPE ON ANY AREA OF THE CDC 1697.

Security of Time Logs

All CDC 1697s shall be secured in a locked metal box. The work/training supervisor shall retain all completed CDC 1697s for a period of one year, and



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forward a copy to the IAO who will retain the records (three years). Work/Training supervisors shall not initial the CDC 1697. The CDC 1697 must be signed.

*R. H. Trimble*  
R. H. TRIMBLE  
Warden (A)

DATE 8-15-11

Revised 06/11

- Attachment A - Inmate Ducat Request Form
- Attachment B - Inmate Job Description
- Attachment C - Inmate Pay Sheet

**PLEASANT VALLEY STATE PRISON  
INMATE DUCAT REQUEST FORM**

PVSP Inmate Assignment Office (Rev. 3/08)

**PRIORITY / NON-PRIORITY**

Circle One

*(Note: Request must be received by 11:00 a.m. of the last working day preceding the date ducat is to be issued. Pursuant to the DOM, Subsection 59130.9.2 Priority Ducats are restricted for Casework purposes and Health Care Services)*

PLEASE TYPE OR PRINT LEGIBLY

	CDCR NUMBER	NAME	REPORT DATE	HOUSING	REPORTING AREA	REASON	TIME
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
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17.							
18.							
19.							
20.							
21.							
22.							
23.							
24.							
25.							

REQUESTING STAFF \_\_\_\_\_ (PRINT) \_\_\_\_\_ (SIGNATURE)

TOTAL DUCATS: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE SUBMITTED: \_\_\_\_\_

ASSIGNMENT: \_\_\_\_\_

EXTENSION: \_\_\_\_\_

PAGE \_\_\_\_ OF \_\_\_\_ PAGE (S)

# CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION INMATE JOB DESCRIPTION

LOCATION CODE: \_\_\_\_\_ JOB TITLE: \_\_\_\_\_ POSITION #: \_\_\_\_\_  
 HOURS W/MEAL BREAK: \_\_\_\_\_ RDO'S: \_\_\_\_\_ PAY GRADE: \_\_\_\_\_  
 WIP CODE: \_\_\_\_\_ MAXIMUM CUSTODY: \_\_\_\_\_ SKILL LEVEL: \_\_\_\_\_  
 DOT CODE: \_\_\_\_\_ REQUIREMENTS/RESTRICTIONS: \_\_\_\_\_

**SPECIFIC DUTIES:**  
 Your responsibilities are listed below, but are not limited to those duties only. You will be expected to perform any additional duties requested or ordered by your supervisor and staff. When you have completed your duties for the day, report to your supervisor. If you are doing duties that are not on this list, please let your supervisor know so that they can be added to the list if needed. If you have any questions regarding your job duties or expectations, you should ask your supervisor for clarification. (THE PRISON STAFF SHOULD ADD THE INFORMATION REGARDING THE SPECIFIC DUTIES AND TIMES OF THE DUTIES IN THIS NARRATIVE)

**ACCEPTABLE STANDARDS:** You are expected to perform your assigned work duties and responsibilities to the BEST of your ability at all times. You must maintain a good working relationship with staff and peers. You are expected to report to work on time and may not leave work without permission from the work supervisor. You are expected to maintain and display an acceptable attitude and demeanor at all time. Personal appearance and hygiene are to be neat and clean in accordance with the Department. You must be dressed in state issued clothing and wear all applicable safety items. You must perform assigned tasks diligently and conscientiously and must not pretend illness or otherwise evade attendance in your assigned work and program activities. The expected amount of work hours is to be kept as near to eight hours per day as the institutional procedure and security needs will allow. You may be required to work more than eight hours when and institutional need occurs. Performance will be evaluated continually and a written Work Supervisor's Report/Education Progress Report (CDC 110/CDC 128-B) will be submitted quarterly.

**VIOLATION OR REFUSAL TO MEET EXPECTED STANDARDS:** If you fail to comply with the requirements of this job and/or the California Code of Regulations, Title 15, progressive discipline will be adhered to. Any "A" time, regardless of duration, will preclude the earning of work time credit for the day (California Code of Regulations, Title 15, Section 3045.4). I have read and received a copy of this job description and fully understand my duties and responsibilities.

Inmate's Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Inmate's Printed Name \_\_\_\_\_ Date \_\_\_\_\_  
 Work/Training Supervisor's Signature and Title \_\_\_\_\_ Date \_\_\_\_\_

Original -- TWIMP Office Copy -- Inmate Copy; Timecard Book

THIS JOB DESCRIPTION IS NOT LIMITED TO ONE PAGE; HOWEVER, YOU ARE REQUIRED TO USE THIS SPECIFIC FORMAT. THE INSTITUTIONS CAN ADD TO THE SPECIFIC DUTIES AND DOCUMENT THE INMATES DAILY WORK SCHEDULE APPROPRIATELY.

